

MODIFIED 2/02/16

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

CODY WARDEN

Appellant

v.

SHELTER MUTUAL INSURANCE COMPANY

Respondent

DOCKET NUMBER WD78252

DATE: November 17, 2015

Appeal From:

Circuit Court of Pettis County, MO
The Honorable Robert Lawrence Koffman, Judge

Appellate Judges:

Division Four
Alok Ahuja, C.J. Presiding, Thomas H. Newton, J., and Charles H. McKenzie, Sp. J.

Attorneys:

Mark Kempton, Sedalia, MO

Counsel for Appellant

Attorneys:

William Crawford, Kansas City, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

CODY WARDEN, Appellant, v. SHELTER MUTUAL
INSURANCE COMPANY, Respondent

WD78252

Pettis County

Before Division Four Judges: Ahuja, C.J., Newton, J., and McKenzie, Sp. J.

Warden had underinsured motorist (UIM) coverage under four Shelter Mutual Insurance Company policies. After being struck by an underinsured motorist, Warden received \$25,000.00 from the vehicle owner's liability insurer. Warden demanded that Shelter pay \$400,000.00 in UIM coverage under his four policies. In response, Shelter paid Warden \$75,000.00 equaling the \$100,000.00 limit of one policy less the \$25,000.00 paid by the vehicle owner's liability insurer. The trial court ruled that the liability insurer's payment reduced (set-off) Shelter's \$100,000.00 UIM limit and that the four Shelter policies did not stack. Warden appeals.

AFFIRMED.

Division Four holds:

In the first point, Warden argues that the trial court erred in finding that the set-off language reduced the UIM coverage limit by the amount Warden received from the vehicle owner's liability insurance provider because the set-off language is ambiguous. We disagree.

To determine whether an insurance policy provides coverage we must look at the insurance policy as a whole. We rely on definitions when provided as well as plain meanings as understood by an ordinary person of average understanding to give the policy effect according to its terms and the parties' reasonable expectations. Here, starting at the Introductory Note the insured is informed that the endorsement limits will be reduced by the amount paid under another insurance policy. The endorsement limits are also highlighted in the paragraph outlining the insuring agreement. Finally, upon review of the "Limits of **Our** Liability" section, the reader is informed that the policy limits are reduced by payments from the liability insurers of those legally liable for the bodily injury to the insured. Given the multiple efforts to alert the ordinary reader to the set-off provision and the plain language explanation of its function, we hold that it is neither ambiguous nor misleading. Warden's first point is denied.

In the second point, Warden argues that the trial court erred in finding that the anti-stacking language in Shelter's policy prohibited Warden from stacking and collecting under three additional Shelter policies with UIM coverage. We disagree.

Because Missouri has no statutory or public policy requiring that UIM coverage be stacked, the courts will not create a requirement for stacked coverage in the absence of ambiguity. Ambiguity exists where an insurance policy promises its insured something at one point but then takes it away at another. Endorsements are designed to amend the form policy.

Therefore, if the endorsement's language and the general policy's provisions conflict, the endorsement will prevail and the policy remains in effect as altered by the endorsement. The "Limits of **Our** Liability" provision clearly states that stacking is not allowed. Warden argues that the anti-stacking language is ambiguous because the "Other Insurance with Shelter" section allows for stacking. However, the section fails to imply stacking by stating that the limit is "the highest limit of any one coverage." Furthermore, the "Effects of Endorsements" provision resolves any potential ambiguity in favor of the "Limits of **Our** Liability" provision explained in the endorsement. Warden's second point is denied.

Opinion by Thomas H. Newton, Judge

November 17, 2015

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